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14 Attorneys for Plaintiff
15 CHRISTINE DOUGHERTY

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 CHRISTINE DOUGHERTY,) NO. C 07-01140 MHP
19 Plaintiff,)
20 v.)
21 AMCO INSURANCE COMPANY)
22 and DOES ONE through TWENTY,)
23 Inclusive,)
24 Defendants.)
25 _____)
26

27 **DECLARATION OF DAVID M. PORTER
28 IN OPPOSITION TO MOTION FOR
29 SUMMARY JUDGMENT, OR IN THE
30 ALTERNATIVE, PARTIAL SUMMARY
31 JUDGMENT, AND IN SUPPORT OF
32 CROSS-MOTION FOR CONTINUANCE
33 PURSUANT TO FRCP 56(f)**

34 Date: April 28, 2008
35 Time: 2:00 p.m.
36 Judge: Hon. Marilyn Hall Patel
37 Dept.: 15

38 I, DAVID M. PORTER, do declare under penalty of perjury as follows:

39 1. I am an attorney admitted to practice law in the State of California and in
40 the Northern District of California, and am one of the attorneys of record for the
41 Plaintiff in the above-referenced matter.

1 2. I represented plaintiff in the underlying action against the underinsured
2 motorist and in her claim for underinsured motorist coverage against defendant AMCO
3 Insurance Company. At no time prior to plaintiff's demand for arbitration in November,
4 2004 did defendant: (1) obtain plaintiff's medical records directly pursuant to a medical
5 release form, (2) have a physician of its own review the medical records plaintiff had
6 provided, (3) request that plaintiff be examined by a physician of its choosing, (4) take
7 its own deposition of plaintiff's treating physicians, (5) take its own deposition of
8 plaintiff. Following plaintiff's demand for arbitration, defendant took the depositions of
9 Plaintiff and the underinsured, negligent driver, Glenn Osmidoff.

10 3. I was present at the arbitration hearing before the Honorable Alfred
11 Chiantelli (retired) on January 26, 2006. At the arbitration hearing, defendant did not
12 present any evidence regarding Plaintiff's injuries or medical condition. Rather, AMCO
13 relied entirely on the treatment by and opinions of plaintiff's treating physicians. I have
14 also reviewed the letters and accompanying documentation supporting plaintiff's
15 underinsured motorist claim which plaintiff's counsel provided to defendant on
16 February 4, 2003 and July 9, 2003. The evidence reviewed by Judge Chiantelli at the
17 arbitration was essentially the same as defendant had in its possession as of July of
18 2003. The only difference was that Judge Chiantelli took live testimony from Dr.
19 Sonzilli, by telephone, whereas AMCO had Dr. Sonzilli's deposition testimony from
20 the Osmidoff case. The substance of each were the same.

21 4. At no time during the over three-year pendency of Plaintiff's underinsured
22 motorist claim did Defendant AMCO ever make any offer to settle the claim between
23 the notice of Plaintiff's underinsured motorist claim in January of 2003 and the
24 payment of the arbitration award in March of 29, 2006.

25 5. On Thursday, April 3, 2008, my co-counsel, Jeremy A. Graham, and I
26 met and conferred with defense counsel Julian J. Pardini and Stephen J. Liberatore at

1 defense counsel's office pursuant to the direction of this Court. During our meet and
2 confer session, defense counsel committed to produce the documents that defendant
3 had previously withheld in response to plaintiff's first document requests back in 2007.
4 Defense counsel withheld those documents pending Plaintiff's stipulation to a
5 Protective Order. Plaintiff executed the Stipulated Protective Order on December 21,
6 2007, over 100 days ago. To date, defense counsel has not produced the previously
7 withheld documents. [NOTE: A package was delivered from defense counsel's office
8 to the office of my co-counsel, Stephen M. Murphy, at 4:45 p.m. on Monday, April 7,
9 2008, the deadline for filing Plaintiff's Opposition to Defendant's Motion For Summary
10 Judgment. I will be unable to review the contents of that package before this
11 Declaration is filed.]

12 6. Nor has defense counsel committed to produce a Person Most
13 Knowledgeable as to "all data relied upon by AMCO in setting reserves for Plaintiff's
14 claims." AMCO originally produced Michael McKeever on this topic, but Mr. McKeever
15 did not have any personal knowledge on that issue. I therefore requested of defense
16 counsel that AMCO produce Jeffrey Mangone again and allow him to answer further
17 questions about his reasoning in setting the reserves for plaintiff's underinsured
18 motorist claim. It is clear that Mr. Mangone's knowledge on that issue is superior to
19 Mr. McKeever's. At Mr. Mangone's previous deposition, defense counsel instructed
20 him not to answer any questions on this issue. Now that AMCO has produced the
21 reserves information pursuant to the Court's Order, Plaintiff should be able to resume
22 its examination of Mr. Mangone. At the time of this writing, defense counsel has not
23 responded as to whether he will produce Mr. Mangone for further questioning or not.

24 7. Finally, I requested that defense counsel provide an unredacted copy of
25 a document which he had previously redacted to delete information related to AMCO's
26 subrogation claim against Mr. Osmidoff. I have heard nothing back from Mr. Pardini as

1 to whether he will produce the unredacted document.

2 8. Attached as Exhibit A is a true and correct copy of excerpts from the
3 notes defendant entered into its file for plaintiff's claim utilizing its Passport system.
4 The Passport notes attached hereto were produced to by defendant as documents
5 Bates Stamped Nos. 010082 through 010124 in response to this Court's Order
6 directing defendant to produce documents evidencing and reflecting the reserves that
7 defendant set for plaintiff's underinsured motorist claim. The same Passport notes
8 had been previously produced by defendant as documents Bates Stamped Nos.
9 010082 through 010123 with the reserve information redacted.

10 9. Attached as Exhibit B is a true and correct copy of excerpts from the
11 transcript of the deposition of Jeffrey Mangone taken by plaintiff's counsel in this
12 matter on October 8, 2007. Exhibit 1 to Mangone's deposition consisted of the
13 redacted Passport notes produced by defendant as documents Bates Stamped Nos.
14 010082 through 010123 and referred to in Paragraph No. 8, above.

15 10. Attached as Exhibit X to the Declaration of defense counsel Julian J.
16 Pardini in support of AMCO's Motion for Summary Judgment is a true and correct copy
17 of Exhibit 3 to the deposition of Jeffrey Mangone, taken in this matter on October 8,
18 2007 (correspondence from Plaintiff's counsel, Stephen M. Murphy, to Defendant
19 AMCO dated February 4, 2003).

20 11. Attached as Exhibit C to the Declaration of Jeffrey Mangone in support
21 of AMCO's Motion for Summary Judgment is a true and correct copy of Exhibit 5 to the
22 deposition of Jeffrey Mangone, taken on October 8, 2007 (correspondence from
23 Plaintiff's counsel, Stephen M. Murphy, to Defendant AMCO dated July 9, 2003).

24 12. Attached hereto as Exhibit C is a true and correct copy of Exhibit 6 to the
25 deposition of Jeffrey Mangone, taken in this matter on October 8, 2007
26 (correspondence from AMCO's adjuster, Jeffrey Mangone, to Plaintiff's counsel,

Stephen M. Murphy, dated July 29, 2003).

13. Attached as Exhibit D is a true and correct copy of excerpts from the transcript of the deposition of Jason Wartach taken by plaintiff's counsel in this matter on March 4, 2008 and Exhibits thereto.

14. Attached as Exhibit E is a true and correct copy of excerpts from the transcript of the deposition of Michael McKeever taken by plaintiff's counsel in this matter on March 6, 2008 and Exhibits thereto.

I make this declaration of my own personal knowledge. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 7th day of April, 2008 at San Francisco, California.

/s/ David M. Porter
DAVID M. PORTER

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, STEPHEN M. MURPHY, hereby declare as follows:

I am one of the attorneys of record for Plaintiff Christine Dougherty in this action and am duly licensed to practice law in the State of California and in the U.S. District Court for the Northern District of California.

I hereby attest that concurrence from attorney and declarant David M. Porter has been obtained in the filing of this Letter Brief.

I declare under the penalty of perjury under the laws of the Untied States of America that the foregoing is true and correct and, if called as a witness, I could testify competently thereto.

Executed at San Francisco, California, this 7th day of April, 2008.

/s/ Stephen M. Murphy
STEPHEN M. MURPHY

* * * * * FOLLOWING IS TO CONFIRM AC31 FAX/EMAIL SENT * * *

THIS SYSM FAX HAS BEEN SENT TO ADP. TO ADJUSTER 0067884ESH020.
 04-19-01 INSTRUCTIONS TO:SCOTT HARTER FROM:HOFFMAN, STEVE 8:42AM
 P

FULL INVESTIGATION X ID VEHICLE MAKE
 MODEL/YEAR/V
 RESPONSIBLE FOR CONTACT X COMPLETE ITEMIZED REPAIR
 EST
 MEDICAL INFO EACH CLAIMANT X AGREED PRICE/PRIOR
 DAMAGE/
 DEATH CERTIFICATE X BOOK VALUE/MARKET SURVEY
 CHECK FOR OTHER INSURANCE X INSURED AUTO 002
 SPECIAL INSTRUCTIONS:
 PLEASE INSPECT VEHICLE PER ASSIGNMENT REQUEST
 FROM THE INSIDE CASUALTY CLAIM REP.

04-23-01 6:27P CST ENTERED BY ESH020 HARTER, SCOTT
 VEHICLE INSPECTED 4-19-01 WITH INSD. WORKED UP EST FOR DMG FOR VISUAL
 DAMAGE, FOR \$7525.00 VEH IS TOTAL LOSS. I CALLED INSD AND MADE OFFER
 A
 S PER ADP AUTOSOURCE \$6780.00 PLUS TAX ETC. SHE PROBABLY GOING THRU
 ADVERSE CARRIER.

* * * * * FOLLOWING IS TO CONFIRM AC31 FAX/EMAIL SENT * * *

04-23-01 INSTRUCTIONS TO:MANGONJ FROM:HARTER, SCOTT 6:43PM
 N

SPECIAL INSTRUCTIONS:
 BE ADVISED THAT OFFER WAS MADE TO INSD FOR ACP PER ADP \$6780.00
 PLUS TAX ETC. SHE PROBABLY GOING THRU ADV CARRIER. PLEASE ADVISE HER
 INTENTIONS AFTER SPEAKING TO HER.

04-24-01 10:58A CST ENTERED BY EJM064 MANGONE, JEFFREY
 THE INSD SENT A POLICE REPORT VIA FAX...

THE CLMT PULLED INTO THE INTERSECTION WELL AFTER THE INSD HAD
 ADVANCED FROM HER STOP SIGN. THE WITNESS REPORTED TO THE
 POLICE THE CLMT WAS NOT LOOKING FORWARD WHEN HE PULLED INTO THE
 INTERSECTION. THE INSD WAS ALMOST THROUGH THE INTERSECTION
 AT THE POINT OF THE IMPACT.

CALLED FOR CLMT AGAIN - HE INDICATED I SHOULD DEAL WITH HIS CARRIER
 RATHER THAN HIM REGARDINGTHE ACCIDENT.

MESSAGE LEFT FOR THE INSD RE: USAA AND IF THEY ARE HANDLING HER
 CLAIM.

04-25-01 6:22P CST ENTERED BY EJM064 MANGONE, JEFFREY
 CALL FROM USAA - THEY ARE ACCEPTING LIABILITY.
 WILL HANDE THE INSD'S CLAIMS.

04-25-01 6:24P CST ENTERED BY EJM064 MANGONE, JEFFREY
 ADVISED THE INSURED. SHE WILL VERIFY WITH USAA, AND ADVISE.

04-30-01 6:21P CST ENTERED BY EJM064 MANGONE, JEFFREY
 INSD VERIFEID USAA HAS EXTENDED COVERAGE - PAYING FOR RENTAL,
 REPAIRS,
 ETC.

05-03-01 7:30P CST ENTERED BY EJM064 MANGONE, JEFFREY

FAR BELOW THE REASONABLE VALUE OF THIS CLM, THEREFORE, AMCO RIGHTS OF REIMBURSMNT ARE NOT IMPLICATED AND AMCO IS ENTITLED TO NO REIMBRSMNT. HE GOES ON TO SAY INSD WILL BE MAKING A UIMBI CLM/JKN
02-20-03 7:30A CST ENTERED BY EJM064 MANGONE, JEFFREY
A LTR WAS SENT TO ATTY 1/9/03 REQUESTING DOCS - SETTLEMENT DOCS, RELEASE, ETC.

THE ATTY RESPONDED WITH THE FOLLOWING:

COPY OF THE COMPLAINT, DOUGHERTY V. OSMIDOFF
COPY OF THE RELEASE
COPY OF OSMIDOFF USAA DEC SHEET, \$30K BI LIMIT
COPY OF THE DEPO OF DR. SPONZILLI, MD (INSD'S MD)
COPY OF THE INSD'S DEPO

PENDING:

INJURY DOCS FOR EVAL

THE REPORTS WE HAVE INDICATE THE INSD SUSTAINED A TORN ROTATOR CUFF AND C5-6 DISC HERNIATION AS A RESULT OF THE ACCIDENT.

THERE WAS A PRIOR INJURY IN 1999 INVOLVING HER THORACIC SPINE. THE INJURY FROM THIS ACCIDENT INVOLVES HER NECK AND SHOULDER.

I ACK THE ATTY'S MATERIAL AND REQUESTED THE MEDS AND REMAINING DOCS ASAP FOR EVAL.

02-20-03 7:44A CST ENTERED BY EJM064 MANGONE, JEFFREY
THE DEPO AND PRESENT RECORDS DO NOT MENTION OR INDICATE SURGICAL INTERVENTION FOR THE INJURIES, RATHER "AGGRESSIVE, NON-SURGICAL CARE."

THE INSD HAS HAD PROTRACTED PHYSICAL THERAPY, ACCUPUNCTURE, AND OTHER NON-SURGICAL PROTOCOLS (NOT SPECIFIED).

THE INJURY APPEARS TO BE OF A SERIOUS ENOUGH NATURE AND THE SURGERY TO REPAIR THE SHOULDER INJURY IS GOING TO HAPPEN SOONER OR LATER, IF THE INSD HAS NOT ALREADY HAD THE OPERATION.

I AM INCREASING THE UIM RESERVES TO \$15K, ADJUSTING ACCORDINGLY.

WE MAY NEED TO ADJUST THIS AFTER THE REST OF THE DOCS ARE IN.

02-28-03 10:02A CST UPLOADED NOTES FROM COLLECT1
02\27\03 ENTRY BY EJN005 NICKELL, JULIE
UIMBI RESERVES ARE SET/JKN

03-20-03 7:29P CST ENTERED BY EJM064 MANGONE, JEFFREY
SENT A NOTE TO THE INSD'S ATTY FOR THE INSD'S INJURY DOCS.
BILLS AND RECORDS FOR ALL OF HER CARE.

04-02-03 1:12P CST ENTERED BY EKB004 KELLY BELLINGHAUSEN
*****FILE REVIEW*****
UIM CLAIM. INSURED WAS MAKING A LEFT TURN WITH CONTROL OF THE INTERSECTION WHEN THE OTHER PARTY ENTERED THE INTERSECTION AND STRUCK INSURED. INSURED ALLEGES TO HAVE SUSTAINED A RIGHT ROTATER CUFF TEAR AND DISC PROTRUSIONS/HERNIATIONS AT C5-6 AND C6-7.

REVIEWING THE MEDS FOR SUMMARY.

08-13-03 10:36A CST ENTERED BY EJM064 MANGONE, JEFFREY
THIS IS A CASE OF CLEAR LIABILITY ON THE PART OF THE CLMNT
DRIVER.
THE CLMNT, FAILED TO YIELD FOR THE INSD AT A STOP SIGN.
THE IMPACT TO THE IV WAS SIGNIFICANT, CAUSING ~\$7,000 IN DAMAGES
TO THE IV. THE CLMNT'S CARRIER PAID THE INSD'S PD 100%.

FOLLOWING THE ACCIDENT, THE INSD CALLED FOR AN APPOINTMENT
FOR AN EXAM, AND WAS ABLE TO SCHEDULE ONE FOR THE 24TH - ONE
WEEK FOLLOWING THE ACCIDENT.

THE INITIAL EXAM REPORTS THE INSD HAD NO PRIOR HISTORY FOR THE
COMPLAINTS REPORTED - RADIATING NECK PAIN.

THERE WAS A MENTION OF A PRIOR ROTATOR CUFF INJURY, OVER 10 YEARS
OLD, AND THE INSD HAD RECOVERED FROM THIS INJURY.

THERE IS A LSO A HISTORY OF A THORACIC COMPRESSION IN 1999.

THE PHYSICIAN NOTED RESTRICTED ROM, WITH PAIN.

ASSESSMENT - QUESTION OF CERVICAL DISK HERNIATION, CERVICAL
SOFT TISSUE STRAIN, RT ROTATOR CUFF STRAIN.

NOTED - INSD WAS PREGNANT, THEREFORE, NO RADIOGRAPHIC STUDIES
PERFORMED.

THE INSD WAS GIVEN AN RX FOR MILD PAIN MEDS AND ADVISED TO REST.

THE PRGNANCY IS THE KEY FACTOR FOR THE INSD'S DELAYED CARE.

HER INJURY COULD NOT BE PROPERLY DX'D UNTIL AFTER THE BABY WAS
DELIVERED.

08-13-03 10:53A CST ENTERED BY EJM064 MANGONE, JEFFREY
THE INSD'S ACCOUNT AND REPORT OF HER INJURIES ARE CONSISTANT
WITH HER DOCTOR'S FINDINGS.

FROM 4/24/01, THE INSD HAD A FOLLOW UP EXAM AT MT. TAM ORTHO -
DR. ERNEST SPONZILLI - FOR ACUTE NECK PAIN - 6/4/01.

IN THE INTERIM, THE INSD HAD 5 PT SESSIONS, WHICH INCLUDED
STABILIZATION EXERCISES.

SHE CONTINUED THE USE OF TYLENOL FOR PAIN (SPORADICALLY), AND
CONTINUED USE OF A CERVICAL TRACTION COLLAR.

ASSESSMENT ON 6/4/01 - PROBABLE CERVICAL DISK HERNIATION AND
RADICULAR PAIN.

THE INSD'S CARE WAS CONSERVATIVE GIVEN THE PREGNANCY (10 WEEKS,
AT THAT TIME).

FROM THIS POINT, DR. SPONZILLI RX'D 8 ACUPUNCTURE TX'S.

FOLLOW UP 7/9/01 - SEEN BY A PA AT MT. TAM ORTHO...

ACUPUNCTURE EXTENDED 6 MORE VISITS.

04/19/02 EXAM - THE INSD HAD BEEN UNABLE TO ATTEND HER PT DUE TO THE ARRIVAL OF HER NEWBORN.

THE CONSERVATIVE CARE CONTINUED.

DR SPONZILLI RX'D ANOTHER 8 TO 12 ACUPUNCTURE SESSIONS.

4/26/02 EXAM - CHRONIC SHOULDER AND NECK PAIN CONTINUING.
EXAM BY RN - NOTED NUMBNESSA ND TINGLING IN INSD'S RT ARM.

5/07/02 EXAM - SOME MODERATE IMPROVEMENT NOTED, HOWEVER, PAIN IS REPORTED AS CONSTANT.

DX'D HERNIATED DISKS, RT SHOULDER CUFF TEAR.

5/28/02 EXAM - DECREASE IN PAIN AND INCREASED ROM. CONTINUING ACUPUNCTURE.

08-13-03 11:32A CST ENTERED BY EJM064 MANGONE, JEFFREY
6/7/02 EXAM - DR SPONZILLI REPORTS INSD WANTS TO CONTINUE WITH NONINTERVENTIONAL CARE - NO SURGERY.

NO MAJOR CAHNGES IN SYMPTOMS OR CONDITION.

HOEVER - IN THE INSD'S 6/4 AND 6/6/02 EXAMAS, THE RN NOTED NECK SYMPTOMS IMPROVING 45% WITH SOME CONTINUING DISCOMFORT.

ON 6/11/02 THE RN DOCUMENTED CONTINUED INMPROVEMENT WITH ACUPUNCTURE TREATEMNTS - SHOULDER REPSONDING SLOWER THAN HER NECK.

FROM 6/13 THROUGH 7/9/02, THE RN NOTES INDICATE CONTINUING IMPROVEMENT WITH ACUPUNCTURE SESSIONS, RESIDUAL PAIN CONTINUES.

THE NOVATO BACK CARE (PT) REPORTS 10 VISITS BY THE INSD WITH LITTLE OR NO CHANGE IN SYMPTOMS.

THE INSD NEVER HAD SURGICAL INTERVENTION, ALTHOUGH IT APPEARS DR. SPONZILLI MENTIONED THIS TO HER ON A NUMBER OF OCCASIONS.

THERE IS NO INDICATION IN THE RECORDS, HOWEVER, THE SURGERIES ARE INEVITABLE.

THE INSD HAS DISCONTINUED CARE. HOWEVER, SHE IS STILL EXPERIENCING CHRONIC PAIN SYMPTOMS IN HER NECK AND SHOULDER.

NO INDICATION OF FUTURE CARE.

08-13-03 11:45A CST ENTERED BY EJM064 MANGONE, JEFFREY
SPECIALS...

\$...1,856.00 - MT TAM ORTHO
.....970.87 - MARIN IMAGING
.....350.00 - NOVATO ACUPUNCTURE CLINIC
....1,025.00 - NOVATO BACK CARE (PT)

\$...4,201.87 - TOTAL

NOTED - IN DR SPONZILLI'S DEPOSITION, HE MENTIONS INJECTIONS FOR THE SHOULDER PAIN, ALONG WITH ARTHROSCOPIC REPAIR OF THE SHOULDER.

THESE PROCEDURES WERE MENTIONED AS AN ALTERNATIVE TO THE AGGRESSIVE CONSERVATIVE CARE HE RX'D FOR THE INSD.

HOWEVER, THE DOCTOR DID NOT INDICATE THE INSD WOULD EVENTUALLY REQUIRE EITHER OF THESE PROCEDURES, VERIFYING SHE WOULD CONTINUE TO EXPERIENCE SOME PAIN AND DISCOMFORT, DEPENDING ON HER LEVEL OF ACTIVITY.

08-13-03 11:46A CST ENTERED BY EJM064 MANGONE, JEFFREY
BASED UPON THIS SUMMARY, I THINK THE RESERVES REMAIN ADEQUATE.

* * * * * FOLLOWING IS TO CONFIRM AC31 FAX/EMAIL SENT * * *

08-13-03 INSTRUCTIONS TO:COLO1 FROM:MANGONE, JEFFREY 11:48AM
N

SPECIAL INSTRUCTIONS:
ADJ SHORTNAME: MANGONJ
CLAIMANT NO: 002 - RAYBURN
COMP NEG: O %
SEAT BELT STATUS: YES
MEDS INCURRED:\$4,201.87
MEDS ADJUSTMENT:\$30,000 - PRIOR SETTLEMENT THIS IS A UIM CASE
WAGE LOSS:\$0
CLAIMANT ATTY: (Y/N)Y
LOW IMPACT LOSS: (Y/N) N CAPTION REPORT IN FILE: (Y/N)Y

08-16-03 2:23P CST ENTERED BY EJM064 MANGONE, JEFFREY
EXT TLR TO ATTY ADVISING THE EVAL PROCESS IS UNDERWAY.

* * * * * FOLLOWING IS TO CONFIRM AC31 FAX/EMAIL SENT * * *

08-20-03 INSTRUCTIONS TO:DUARTER FROM:RENFRO, KIMBERLY 4:27PM
N

SPECIAL INSTRUCTIONS:
AFTER REVIEW OF FILE ON CLMNT 01/JUDIEANN, I WAS UNABLE TO LOCATE IN AWD THE MEDICAL RECORDS FROM LAKWOOD ORTHO. WE HAVE BILLS IN AWD
THAT
CLMNT WAS SEEN ON 12/6/02 AND 1/6/03, BUT WE NEED THE COMPLETE
MEDICAL RECORDS/EXAM/SOAP NOTES FROM THE PHYSICIAN TO HAVE A ACCURATE
CONSULT.
ONCE YOU HAVE OBTAINED THESE RECORDS AND THEY ARE IN AWD, PLS
RESUBMIT
YOUR REQUEST FOR CONSULT. IF YOU HAVE ANY FURTHER QUESTIONS PLS FEEL
FREE TO CONTACT ME AT 916-920-7591. THANKS

* * * * * FOLLOWING IS TO CONFIRM AC31 FAX/EMAIL SENT * * *

08-21-03 INSTRUCTIONS TO:MANGONJ FROM:JO ANN RILEY 2:48PM
N

SPECIAL INSTRUCTIONS:
THIS IS TO ADVISE YOU THE CONSULT IS COMPLETED.

08-22-03 8:10A CST ENTERED BY EJM064 MANGONE, JEFFREY
THE CONSULT...

RANGE IS ROUGHLY EQUAL TO BUT LESS THAN THE UNDERLYING
BI SETTLEMENT.

I REVIEWED THE MED RECORDS, THE INSD'S DEPOSITION (LOCATED IN THE AWD FILE UNDER "BI SETTLEMENT DOCS/POLICY"), AND DR. SPONZILLI'S DEPOSITION (SAME LOCATION AS INSD'S).

THERE IS SOME DISCUSSION OF LOSS OF EARNINGS, BUT ONLY DURING THE INSD'S DEPOSITION.
THE ATTY FOR THE INSD DOES NOT MENTION A CLAIM FOR WAGE LOSS.

THE KEY FACTOR IN THE EVALUATION APPEARS TO BE WHETHER OR NOT THE INSD IS GOING TO OPT FOR SURGICAL REPAIR OF THE DISC HERNIATIONS AND THE SHOULDER INJURY.

WE ARE 28 MONTHS POST ACCIDENT, AND THE INSD HAS NOT OPTED FOR A SURGICAL PROCEDURE.
IT IS NOT CLEAR IF SHE IS CONTINUING WITH ACCUPUNCTURE THERAPY, MEDS, OR PT.

THERE IS NO INDICATION FROM HER ORTHO THE INJURIES HAVE CAUSED ANY PERMANENT IMPAIRMENT. HOWEVER, THE ATTY REPORTS THE INSD IS CONTINUING TO EXPERIENCE, ON AN APPARENT REGULAR BASIS, NECK AND SHOULDER ACHE, PAIN, AND STIFFNESS.

THERE IS SOME DOCUMENTATION CONCERNING A TEMPORARY DISABILITY FOR THE YEAR FOLLOWING THE ACCIDENT, BUT, THE INSD ALSO HAD HER BABY DURING THIS PERIOD.

IT IS NOT UNREASONABLE TO EXPECT CONTINUING PAIN FROM THE ACCIDENT INJURIES.
HOWEVER, THE INSD'S DECISION FOR FUTURE CARE, GIVEN THE APPARENT SERIOUS NATURE OF THE INJURIES, IS TO CONTINUE WITH CONSERVATIVE MEASURES - ALTHOUGH THESE MEASURES OR THE CURRENT TREATMENT PROTOCOL IS NOT DESCRIBED.

08-22-03 8:11A CST ENTERED BY EJM064 MANGONE, JEFFREY
LETTER TO THE ATTY ADVISING HIM THE EVALUATION IS COMPLETE, BUT, WE NEED ADDITIONAL INFORMATION TO ESTABLISH THE COURSE OF THE INSD'S FUTURE CARE AND DOCUMENTS FOR HER WAGE LOSS FROM THE INJURIES.

08-28-03 6:39P CST ENTERED BY EJM064 MANGONE, JEFFREY
ATTY CALLED IN RESPONSE TO THE LETTER I SENT REQUESTING THE ADDITIONAL INFORMATION FOR THE INSD'S CASE.

THERE ARE NO LOSS OF EARNINGS.

THE SURGERY IS SOMETHING THE INSD IS CHOOSING NOT TO DO.

I ASKED THE ATTY IF HE HAD SOMETHING FROM DR. SPONZILLI RE: THE MEDICAL NECESSITY OF THE SURGERY.
ATTY WILL QUESTION DR. SPONZILLI ABOUT THIS AND ADVISE.

IF THE SURGERY IS A MEDICAL NECESSITY, AND THE INSD CHOOSES NOT TO HAVE THE SURGERY, WE CAN PUT MORE MONEY ON THE EVALUATION OF HER GENERAL DAMAGES TO MOVE THE SETTLEMENT RANGE ABOVE THE \$30,000.00 RANGE.

09-03-03 8:21A CST ENTERED BY EJM064 MANGONE, JEFFREY
PENDING - ADDITIONAL MED DOCS FROM THE ATTY FIOR THE INSD.

09-10-03 10:32A CST UPLOADED NOTES FROM COLLECT1

06-11-04 7:01P CST ENTERED BY EJM064 MANGONE, JEFFREY
NOTHING FROM THE ATTY.

OUR PREVIOUS EVAL INDICATED NO UIM CLAIM.

NOTE TO ATTY FOR MATERIAL OR WE WILL HAVE TO GO BY OUR
ORIGINAL EVAL.

*** FOLLOWING IS TO CONFIRM AC30 CORRESPONDENCE TRANSACTION ***
06-11-04 7:06P ORDERED BY EJM064 MANGONE, JEFFREY
FORM#923C ED DATE:1099 30 LINE BLANK MEMO - CLAIMS
SENT TO: MR. STEPHEN MURPHY ESQ. 180 MONTGOMERY STE. 940
SAN FRANCISCO CA 94104

06-17-04 5:42P CST ENTERED BY EJM064 MANGONE, JEFFREY
RECEIVED A LETTER FROM INSD'S PHC REQUESTING REIMBURSEMENT
FOR THEIR MED PAYMENTS.

LETTER TO RAWLINGS RE: INSD'S EXCESS MED PAY.

SNET A COPY OF THE ENDORSEMENT, ALSO.

06-29-04 8:34A CST UPLOADED NOTES FROM COLLECT1
06\26\04 ENTRY BY ECM020 MORSE, CHERIE

06-29-04 8:34A CST UPLOADED NOTES FROM COLLECT1
06\26\04 ENTRY BY ECM020 MORSE, CHERIE

07-20-04 8:32A CST UPLOADED NOTES FROM COLLECT1
07\19\04 ENTRY BY SUPERVISOR REVIEW FILE

07-20-04 8:32A CST UPLOADED NOTES FROM COLLECT1
07\19\04 ENTRY BY

07-20-04 8:32A CST UPLOADED NOTES FROM COLLECT1
07\19\04 ENTRY BY
CLOSED BY SUPERVISOR

09-28-04 2:21P CST ENTERED BY EJM064 MANGONE, JEFFREY
REVIEWED CLAIM AFTER EXTENDED MED LEAVE.

THERE HAS BEEN NO RESPONSE TO THE ATTY FOR THE ADDITIONAL INFORMATION
ON THE INSD'S CARE AND FUTURE CARE.

THE EVAL FOR THE INJURY DID NOT INDICATE A UIM EXPOSURE, AND THE ATTY
WAS ADVISED OF THIS.

THE EVAL RANGE IS \$ 26522 - \$ 32102. SETTLEMENT WAS MADE FROM
USAA AT \$30,000, THE EXTENT OF THE LIMITS FOR THE CLMNT'S
POLICY.

THERE IS A POTENTIAL FOR UIM WITH AN EXPOSURE, BASED UPON THE
EVAL OF \$2,102, THE HIGH END OF THE RANGE.

THE ATTY'S DEMAND IS AT \$45,000.

LTR TO ATTY, ADVISING HIM WE ARE CLOSING OUR FILE, DUE TO INACTIVITY

AND NO ADDITIONAL INFORMATION INDICATING A CLAIM VALUE GREATER THAN THE SETTLEMENT MADE WITH USAA.

09-28-04 2:27P ORDERED BY EJM064 * * * FOLLOWING IS TO CONFIRM AC30 CORRESPONDENCE TRANSACTION * * *
FORM#:923C ED DATE:1099 30 LINE BLANK MEMO - CLAIMS
SENT TO: MR. STEPHEN MURPHY ESQ. 180 MONTGOMERY STE. 940
SAN FRANCISCO CA 94104

11-05-04 10:57A CST ENTERED BY EJM064 MANGONE, JEFFREY
ATTY HAS SENT A DEMAND FOR ARBITRATION.

THE DISPUTE ARISIES FROM THE EVALUATION OF THE INSD'S UIM CLAIM.
OUR EVAL DOES NOT INDICATE A UIM CLAIM IS PRESENT, AND ATTY WAS ADVISED OF THIS NOVEMBER 26, 2003.

11-05-04 11:07A CST ENTERED BY EJM064 MANGONE, JEFFREY
CALLED FOR THE ATTY RE: A DEMAND AMOUNT.

THE ATTY IS OUT OF THE OFFICE UNTIL MONDAY, 11/8.
REFER TO LIT.

TRANSFER TO LITIGATION

NAME OF PERSON SERVED: ***DEMAND FOR UIM ARBITRATION
IF SERVICE BY MAIL, WAS ACK SIGNED AND RETURNED ?

LOSS FACTS:
CLMNT FAILED TO YIELD RIGHT OF WAY, HIT IV.

LIABILITY: CLEAR XXXXX DISPUTED _____
DAMAGES: MEDICAL \$ 4201.87 WAGE: \$ 00.00
LAST DEMAND: NONE LAST OFFER: DENIED

REASON FOR SUIT/COMMENTS:

OUR EVAL OF THE INJURY DOES NOT INDICATE AN UIM CLAIM.

=====

11-05-04 5:20P CST ENTERED BY EJM064 MANGONE, JEFFREY
SPOKE WITH MANAGER RE: MEDIATION.

ONCE ATTY CALLS BACK I WILL MENTION THIS OPTION TO
HIM AND PRESS FOR THE MEDIATION.

11-05-04 5:48P CST ENTERED BY EKB004 KELLY BELLINGHAUSEN
*****REVIEWED*****
OTHER PARTY FAILED TO YIELD RIGHT-OF-WAY TO INSURED AND STRUCK
HER. CLAIMANT VEHICLE 1992 FORD F150 P/UP; INSURED VEHICLE
1969 PORSCHE 912 WITH RIGHT REAR DAMAGES AMOUNTING TO APPROX
\$7000 WHICH WAS PAID BY THE OTHER CARRIER.

INSURED DID NOT START EXPERIENCING PAIN UNTIL A FEW FOLLOWING THE

ACCIDENT. INITIAL COMPLAINTS WERE OF SEVERE NECK STIFFNESS WITH PAIN RADIATING DOWN INTO HER RIGHT ARM. SHE WAS IN EARLY STAGES OF PREGNANCY SO X-RAYS WERE NOT TAKEN. SHE TOOK TYLENOL AND UNDERWENT PT AND ACCUPUNCTURE UNTIL THE BIRTH OF HER CHILD IN DECEMBER 2001. SHE THEN HAD AN MRI ORDERED BY ORTHO WHICH REVEALED MILD HERNIATIONS AT C5-6 AND C6-7 AS WELL AS RIGHT ROTATER CUFF TEAR. SURGERY WAS OFFERED AS AN OPTION BUT CLAIMANT CHOSE TO UNDERGO CONSERVATIVE CARE AND CONTINUED WITH PT. RADIATING PAIN EVENTUALLY RESOLVED. CLAIMANT CONTINUES TO HAVE PERIODIC HEADACHES AND NECK PAIN.

INSURED IS A 43 YR OLD WOMAN WITH HISTORY OF RT ROTATER CUFF TEAR 10 YRS PRE-ACCIDENT WHICH OCCURRED WHILE SHE WAS A SOFTBALL PITCHING COACH. THE TEAR EVENTUALLY HEALED ON ITS OWN.

MY CONCERN RE: THE ROTATER CUFF TEAR IS THAT THE MRI DOES NOT DETECT THE OLD TEAR. IT IS POSSIBLE THAT THE TEAR DETECTED WAS ACTUALLY THE OLD TEAR (?)

NO WAGE LOSS.
MEDS TOTAL \$4201.

CLAIMANT CARRIER PAID THEIR LIMITS OF \$30,000. THEY ARE SEEKING \$45,000 UNDER THIS POLICY.

DISCUSSED WITH JEFF AND REQUESTED THAT HE CONTACT ATTY TO DISCUSS POSSIBLE MEDIATION.

IT IS INTERESTING THAT IN ATTY'S ARB DEMAND, THE PROCESS HE DESCRIBES IS THE APPRAISAL CLAUSE OF THE PHYSICAL DAMAGE COVERAGE RATHER THAN THE UM ARB PROCESS.

11-05-04 5:48P CST ENTERED BY EKB004 KELLY BELLINGHAUSEN
WILL FOLLOW-UP ON MONDAY AND DISCUSS REFERRAL WITH DIRECTOR
MIKE MCKEEVER IS NECESSARY.

11-09-04 12:47P CST ENTERED BY EKB004 KELLY BELLINGHAUSEN
DISCUSSED LOSS WITH DIRECTOR MIKE MCKEEVER. AUTHORITY TO
REFER TO LITIGATION FOR FURTHER HANDLING. DID SO NOW.

***** FOLLOWING IS TO CONFIRM AC02 CLAIM REP UPDATE *****
11-09-04 4:02P CST ENTERED BY ESP005 POULSON, STEVE
CR

REP POSITION 1 CHANGED FROM REP NO 87502 JEFF MANGONE 707-769-1542
HOWARD800-552-2437/X628 TO REP NO 85106 LINDA

2 REP NO 83816 SCOTT HARTER 707-765-6773 DELETED FROM REP POSITION
3 REP NO 72109 TIM KALVIG 14-3260 DELETED FROM REP POSITION

11-09-04 4:19P CST ENTERED BY ESP005 POULSON, STEVE
LINDA, HERE'S A DEMAND FOR UNDERINSURED MOTORIST ARBITRATION IN MARIN COUNTY FOR YOU TO HANDLE.

INSURED HAD STOPPED AT STOP SIGN AT FOUR WAY STOP INTERSECTION. INSURED PULLED INTO THE INTERSECTION AND WAS IN THE PROCESS OF MAKING A LEFT TURN WHEN ADVERSE VEHICLE PULLED INTO INTERSECTION FROM THE OPPOSITE DIRECTION AND COLLIDED WITH RIGHT REAR SIDE OF INSURED VEHICLE IN SIGNIFICANT IMPACT. INDEPENDENT WITNESS INDICATES THAT ADVERSE DRIVER WAS NOT LOOKING FORWARD AS PULLED FORWARD. INSURED SUSTAINED CERVICAL AND RIGHT ROTATOR CUFF INJURIES. DIAGNOSTIC TESTS

WERE DELAYED AS INSURED WAS 10 WEEKS PREGNANT AT THE TIME. INSURED RECEIVED CONSERVATIVE TREATMENT. AFTER THE BABY WAS BORN AND TESTS DONE SURGERY WAS MENTIONED AS AN OPTION, BUT INSURED CHOSE NOT TO HAVE SURGERY. USAA PAID ITS \$30K BODILY INJURY LIMIT TO INSURED. WE HAVE PAID \$2,857 OF OUR \$5K MEDPAY LIMIT. THIS POLICY HAS \$100K UIM LIMIT LESS OFFSET OF \$30K FOR NET OF \$70K. DEMAND WAS \$45K. WE HAVE TAKEN THE POSITION THAT INSURED HAS BEEN FULLY COMPENSATED. I SUGGEST THAT YOU REFER THIS MATTER TO SAN FRANCISCO AND TO PROTECT OUR INTERESTS.

I HAVE CREATED THE LITIGATION FOLDER AND TREE ON AWD.

I HAVE MADE THE INITIAL ENTRIES ON THE SUIT REPORT ON THE LITIGATION FILE DATABASE. YOU CAN MAKE ANY FURTHER ENTRIES NEEDED.

LET ME KNOW IF YOU HAVE ANY QUESTIONS. STEVE

11-12-04 3:29P CST ENTERED BY ELH004 HOWARD, LINDA
REC'D AND REV UMBI RE-ASSIGNMENT FROM THE FIELD

**COVERAGE
PERSONAL AUTO POLICY WITH \$100K UMBI LIMIT
DRIVER 001 CHRISTINE DOUGHERTY RAYBURN 1-12-60
VEH 002 1969 PORSCHE
POLICY IN FORCE SINCE BEFORE 1999 AND LOOKS LIKE A ROLLOVER BUT

REMARK
S DO NOT INDICATE FROM WHAT COMPANY. SHOWS PRIOR UMBI FROM 4-8-99 FOR SAME DRIVER AND WE PAID HER \$90K. NOT AN ALLIED CLAIM #.
POLICY STILL IN FORCE AND OTHERWISE REMARKS ARE INSIGNIFICANT TO LOSS

**REQUEST FOR ARBITRATION DATED 11-4-04
-\$30K LIMITS RECEIVED FROM USAA
-DEMAND FOR \$45K ADDITIONAL
-CLAIM DENIED BY CLAIMS REP DUE TO INJURY EVALUATION.

*INVESTIGATION
-PR FAULTS ADVERSE DRIVER
-R/S TAKEN FROM INS (REQ TAPE)
-PHOTOS AND REPAIR EST FOR I/V
-INDEX WITH X-REF ONLY
-DEPO TRANS OF INS AND ORTHO IN FILE

IMPACT
INS DID NOT HAVE LEFT SIGNAL ON BUT THIS DOES NOT SEEM TO MATTER AS ADVERSE WAS LOOKING ELSEWHERE PER WITNESSES.

**PROPERTY DAMAGE
INS DRIVING 1969 PORSCHE WHICH SUSTAINED MODERATE DAMAGE TO THE PASS REAR CORNER, MOSTLY ABOVE THE WRAPAROUND BUMPER AND UP TO THE REAR WHEEL-WELL. \$7500 REPAIR EST AND VEH WAS TOTALLED AND USAA PAID INS. DOES NOT INDICATE A HUGE IMPACT HOWEVER THE AGE OF THE VEHICLE AND LACK OF IMPACT TECHNOLOGY MIGHT BE A FACTOR.
ADVERSE DRIVING 1992 FORD F150 WHICH CLEARLY WENT ABOVE I/V BUMPER.

PR
INDICATES MODERATE DAMAGE TO THE FRONT PASS CORNER.

11-12-04 4:58P CST ENTERED BY ELH004 HOWARD, LINDA
P/C INS ATT/LM ON V/M TO INTRODUCE HIMSELF AND WOULD HE LIKE TO

01-31-05 5:36P CST ENTERED BY ELH004

HOWARD, LINDA

02-04-05 10:52A CST ENTERED BY ELH004
REC'D E-MAIL FROM DEFENSE:

HOWARD, LINDA

02-24-05 5:30P CST ENTERED BY ELH004
ATT FILE REV ON MONDAY

HOWARD, LINDA

-CARL FEELS WE SHOULD MAKE SOME KIND OF AN OFFER
REVIEWED FILE TO DETERMINE WHAT TO OFFER

-INS GOT \$30K FROM ADVERSE CARRIER BASED ON \$4000+ IN TRMT

-WE HAVE NOT BEEN ABLE TO DETERMINE WHY SHE WAS PAID SO MUCH JUDGING
BY HE RECORDS REV SO FAR

-CLAIMS REP SENT DENIAL IN RESPONSE TO \$45K DEMAND FROM INS ATT
-I ORIGINALLY CALLED INS ATT TO SEE IF WE COULD RESOLVE FOR SOME

SMALL
INJURY
AMOUNT MORE AND AFTER DISCUSSING W/INS, HE INDICATED THEY FELT

COUNS
WORTH SIGNIFICANTLY MORE DUE TO HER CONTINUING COMPLAINTS AND THAT
SHE MAY HAVE HAD ADDITIONAL TRMT AND HE SUGGESTED I SEND OUT TO

ADVERS
-I CALLED STEVE TO DISCUS AND WE AGREED THERE IS NO WAY TO MAKE AN
EDUCATED OFFER AT THIS POINT AS WE STILL CANNOT FIGURE OUT WHY

E PAID HER THE \$30K AND WE NEED FULL MED INFO

03-03-05 10:59A CST ENTERED BY ELH004

HOWARD, LINDA

11-29-05 1:19P CST ENTERED BY ECW036 WHITE, CHRIS
FILE REVIEW. UIM ARB IS SCHEDULED FOR 1/06. AT ARB WE'LL ARGUE SOME
COMPARATIVE ON THE INSD FOR MAKING THE LEFT TURN AND SOME QUESTION
ABOUT THE SEVERITY OF THE INJURIES AS WELL AS PRE-EXISTING INJURIES.
RESERVE APPEAR ADEQUATE AT \$15K.

12-29-05 4:48P CST ENTERED BY ELH004 HOWARD, LINDA
CALLUP
ARB SET FOR 1-26-06
RESET CALLUP FOR 20TH

01-04-06 4:53P CST ENTERED BY ELH004 HOWARD, LINDA

I COMPUTED LIEN ITEMS AND DEDUCTED THOSE FOR A NEW INJURY, ADDED ON
OTHER AMOUNTS, NOT IN LIEN, THAT EOBS INDICATE THEY PAID. IF WE ADD
TO OUR MED PAY THE TOTAL IS \$4888.61
MED PAY \$3087.31
LIEN479.97
EOBS120.00 TO ACCU
1201.33 FOR MRIS
TOTAL\$4888.61

ADVISED DEF OF MY COMPUTATIONS
01-20-06 6:15P CST ENTERED BY ELH004 HOWARD, LINDA
CALLUP
ARB SET FOR THE 26TH

01-26-06 6:02P CST ENTERED BY ELH004 HOWARD, LINDA

01-26-06 6:04P CST ENTERED BY ELH004 HOWARD, LINDA
LIMIT IS \$100K, MINUS \$15K ALREADY REC'D FROM ADVERSE
RESERVE AT \$15K AND I WILL LEAVE FOR NOW.

01-26-06 6:32P CST ENTERED BY ELH004 HOWARD, LINDA

01-26-06 6:33P CST ENTERED BY ELH004 HOWARD, LINDA
*****CORRECTION
LIMIT IS \$100K BUT INS RECEIVED \$30K FROM OTHER CARRIER, SO \$70K

EXHIBIT B
to Declaration of
David M. Porter

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4

5 CHRISTINE DOUGHERTY,

6 Plaintiff,

7 vs. No. C 07-01140 MHP

8 AMCO INSURANCE COMPANY,
and DOES ONE through
9 TWENTY, inclusive,

10 Defendants.

11 _____/

12

13

14 DEPOSITION OF JEFFERY V. MANGONE

15 October 8, 2007

16

17 Reported by:

18 Diane L. Freeman
CSR NO. 5884

19

20

21 LUSK & SNYDER
3715 MONTEREY BOULEVARD
22 OAKLAND, CALIFORNIA 94619
23 (510) 482-9991/FAX (510) 482-1052

24

25

1 I N D E X

2		Page
3	EXAMINATION BY MR. MURPHY	6
4		

5 ---oOo---

6	QUESTIONS INSTRUCTED NOT TO ANSWER	
7	Page 67/Line 8	
8		

9

10 E X H I B I T S

11	Plaintiff's	Page
12	1 010082-010123 - Computer printout of Passport file	47
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15	3 February 4, 2003 letter to Mr. Mangone from Mr. Murphy, 1 page	78
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17	4 February 20, '03 letter to Mr. Murphy from Mr. Mangone, 1 page	79
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19	5 July 9, 2003 letter to Mr. Mangone from Mr. Murphy, 4 pages	80
20	6 July 29, 2003 letter to Stephem M. Murphy from Jeffery V. Mangone, 1 page	86
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22	7 010481 - August 22, '03, letter to Stephen Murphy from Jeffery Mangone	109
23	8 010218, 010222-010226, excerpt from the deposition of Ernest H. Sponzilli, M.D.	115
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25	9 October 29th, '03 letter to Stephen Murphy from Jeff Mangone, 1 page	122

1 E X H I B I T S (continued)

2 Plaintiffs	Page
3 10 010510 - September 28, 2004 letter to Stephen Murphy from Jeff Mangone, 1 page	131
4	
5 11 Casualty Best Claims Practices Personal Lines and Commercial April 26, 2007, 13 pages	141
6	
7 12 California Fair Claims Regulations, 5/16/07, 24 pages	151

8
Defendant's
9
NONE MARKED.
10

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13:22:52 1 Q. What office do you go to?

13:22:55 2 A. I go to our regional office in Sacramento.

13:22:56 3 Q. What is the address of that office?

13:23:01 4 A. I believe it is 1601 Exposition Boulevard,

13:23:03 5 Sacramento, California.

13:23:09 6 Q. And has that been the office that you'd report

13:23:11 7 to since you started with the company?

13:23:13 8 A. No, sir.

13:23:16 9 Q. Tell me the progression of offices you've

13:23:17 10 reported to beginning in '99.

13:23:20 11 A. '99, would have been the office on Professional

13:23:25 12 Drive in Santa Rosa, California, and I don't recall the

13:23:30 13 address for that. That office closed, and all of our

13:23:37 14 reporting and regional matters were handled out of

13:23:38 15 Sacramento.

13:23:39 16 Q. Do you have a recollection of when that office

13:23:41 17 in Santa Rosa closed?

13:23:48 18 A. No, sir, I don't, not an exact date. I can't

13:23:51 19 even come close. I don't remember.

13:23:54 20 Q. During 2003 and 2004 while you were involved in

13:23:57 21 adjusting this claim, were you reporting to the

13:23:57 22 Sacramento office?

13:23:59 23 A. Yes, sir.

13:24:00 24 Q. Who was your supervisor at that time?

13:24:05 25 A. Kelly Bellinghausen. If you'd like me to spell

13:24:06 1 that, I will.

13:24:07 2 Q. Thank you, please.

13:24:12 3 A. B-e-l-l-i-n-g-h-a-u-s-e-n, and Kelly is

13:24:15 4 K-e-l-l-y.

13:24:16 5 Q. Kelly, male or female?

13:24:18 6 A. Female.

13:24:21 7 Q. What was her job title?

13:24:23 8 A. Manager.

13:24:23 9 Q. Claims manager?

13:24:2510 A. Yes.

13:24:2911 Q. What was your job title?

13:24:3212 A. I think at that point they called me a Senior

13:24:3613 Claims Specialist II.

13:24:3914 Q. Let me go through your employment to get all

13:24:4215 your job titles. When you started in '99, what was your

13:24:4316 title?

13:24:4717 A. At that point it was just -- I think it was

13:24:5018 Claims Specialist.

13:24:5319 Q. When did that change?

13:24:5620 A. Late 1999.

13:24:5721 Q. To what?

13:25:0122 A. Senior Claims Specialist II.

13:25:0623 Q. So you've had the same title since late '99?

13:25:0824 A. They changed it on me again, and that was

13:25:1225 recent. I hate to say this, but I'd have to actually

14:04:46 1 party claims?

14:04:47 2 A. Yes.

14:04:51 3 Q. When you stopped being the person to input the

14:04:54 4 data, did you get evaluations from the medical

14:04:58 5 department through Colossus on both first and third

14:04:59 6 party claims?

14:05:05 7 A. Yes, and I think it was called the Colossus unit

14:05:08 8 at that point.

14:05:11 9 Q. Do you know when the title became the Colossus

14:05:11 10 unit?

14:05:15 11 A. No, sir. Perhaps whenever I had to stop -- or

14:05:18 12 perhaps whenever they decided it was time for us to

14:05:26 13 stop, us being claim representatives, making data entry

14:05:29 14 into Colossus.

14:05:34 15 Q. Do you know the names of any of the people in

14:05:39 16 the Colossus unit in 2003-2004, other than Kimberly?

14:05:42 17 A. No.

14:05:58 18 Q. Did you, as a Senior Claims Specialist, have any

14:06:02 19 authority to make a settlement offer that was different

14:06:07 20 than the offer proposed by Colossus?

14:06:09 21 A. No, sir.

14:06:13 22 Q. So was it your sole responsibility to settle the

14:06:17 23 case within the range that was provided by Colossus?

14:06:24 24 A. Based on the data received, yes. That would be

14:06:57 25 data received for the evaluation.

15:35:15 1 A. That was one factor.

15:35:16 2 Q. What are the others?

15:35:21 3 A. When her last treatment date was. I think, the

15:35:25 4 span of time between -- at least the time of the review

15:35:29 5 and the evaluation of the case and her last treatment

15:35:34 6 date, according to the records that I was able to

15:35:37 7 review.

15:35:58 8 Q. Take a look at page 100 on Exhibit 1. Toward

15:36:02 9 the bottom, there is continuation of the August 13th,

15:36:0810 '03 note. It says, "The insured has discontinued care,

15:36:1211 however, she is still experiencing chronic pain symptoms

15:36:1312 in her neck and shoulder."

15:36:1613 I just want to confirm, is that the continuation

15:36:1914 of your review of the document provided to you?

15:36:2215 A. That's a continuation of my -- of my review and

15:36:3216 my entry of the data that I received.

15:36:4017 Q. Next page, 101, August 13, '03, you have a note

15:36:4518 at 11:48 a.m., and it says "Special instructions"; what

15:36:4619 does that mean?

15:36:5320 A. Well, if you look at the date, it says 8-13-03,

15:36:5621 "Instructions to: COLO1."

15:36:5722 Q. Colossus?

15:37:0023 A. There you go. This was the referral to the

15:37:0424 Colossus unit at that time, and that was how it was

15:37:0825 made. This note generates an e-mail to whoever was the

15:37:12 1 supervisor of that unit advising them that the referral

15:37:15 2 was being made.

15:37:22 3 Q. Is the information that you've included with

15:37:24 4 these instructions standard information that you would

15:37:26 5 include in any referral to Colossus?

15:37:33 6 A. Are you referring to what I've indicated after

15:37:37 7 each one of these colons here?

15:37:40 8 Q. No, I'm interested in the categories.

15:37:42 9 A. What categories?

15:37:4610 Q. Let's start with "Comparative negligence"; is

15:37:5011 that a category you would always address in your

15:37:5112 reference to Colossus?

15:37:5513 A. I am sorry. I see. This is a standard macro.

15:37:5714 Q. That's what I meant to ask.

15:37:5815 A. Okay.

15:38:0216 Q. So you have a standard macro that sets out

15:38:0417 fields that you are supposed to complete when you send

15:38:0418 it to Colossus?

15:38:0619 A. Right.

15:38:0620 Q. Is that right?

15:38:0721 A. Yes.

15:38:1322 Q. So comparative negligence is one, and is the

15:38:1323 percent zero your assessment?

15:38:1424 A. Yes.

15:38:1825 Q. So Ms. Dougherty was not negligent at all in

15:38:20 1 causing this accident was your conclusion?

15:38:24 2 A. At the level where the claim was at that point,

15:38:25 3 yes, that's correct.

15:38:28 4 Q. Then "Seatbelt status," does that mean whether

15:38:30 5 the insured was wearing a seatbelt?

15:38:30 6 A. That's correct.

15:38:32 7 Q. You wrote yes, correct?

15:38:36 8 A. Keep in mind, this would not necessarily be for

15:38:38 9 the insured -- in this particular case, it is for the

15:38:4110 policyholder -- but the injured party.

15:38:4511 Q. The claimant, if it's a third-party case?

15:38:4812 A. Whoever, the injured party. Seatbelt status,

15:38:5113 yes, meaning they were wearing a seatbelt.

15:38:5514 Q. Is the macro for the Colossus the same whether

15:38:5915 it's a third-party case or a first-party case?

15:39:0016 A. Yes.

15:39:0317 Q. That is, you provide the same type of

15:39:0418 information to Colossus on a third-party case as you do

15:39:0619 a first-party case?

15:39:0720 A. Yes.

15:39:1221 Q. Then you have "Meds incurred," and this is the

15:39:1222 medical bills you are aware of?

15:39:1323 A. Correct.

15:39:1524 Q. Then "Meds adjustment," and you wrote, "\$30,000

15:39:2025 - prior settlement. This is a UIM case." So why is

15:52:36 1 it was the policyholder was doing at the time that she

15:52:38 2 couldn't do during the recovery from the surgery.

15:52:40 3 So, yeah, it would have been a significant

15:52:44 4 factor. I mean, there are a lot of factors that go into

15:52:49 5 the evaluation of surgery as opposed to non-surgery,

15:52:51 6 plus the special damages would be increased with the

15:52:57 7 bill fees.

15:52:59 8 Q. Then toward the bottom of that note, you wrote,

15:53:02 9 "It is not unreasonable to expect continuing pain from

15:53:0810 the accident injuries." What did you base that on?

15:53:1211 A. History given by the policyholder that was

15:53:1412 recorded by her treating physicians.

15:53:1713 As you can see, what I'm doing in this note is

15:53:2014 making kind of an overview of -- going back to my

15:53:2615 initial entries concerning the treatment data, and then

15:53:2916 I'm trying to basically pull everything together with

15:53:3517 the consultation that was provided to me from Colossus.

15:53:4018 It's almost a way of, in a sense, thinking out

15:53:4619 loud. What else do we need? What else can we obtain or

15:53:5020 ask for that's going to give this policyholder a claim,

15:53:5121 a viable claim?

15:53:5422 Q. So was it your conclusion after reviewing the

15:53:5823 Colossus report that Ms. Dougherty did not have a viable

15:53:5924 claim?

15:54:0125 A. At this stage, that's correct. I mentioned that

15:54:04 1 in my notes earlier, that the evaluation from Colossus

15:54:09 2 was roughly equal to but less than underlying BI

15:54:13 3 settlement, and that is found on page 101 at the very

15:54:22 4 bottom, 8/22/03.

15:54:25 5 Q. Just skipping ahead to put some numbers on that

15:54:31 6 evaluation, if look at 105 --

15:54:33 7 A. There it is.

15:54:34 8 Q. -- there is a note September 28, '04.

15:54:35 9 A. Yes.

15:54:3810 Q. It says, "The evaluation range is 26,522 to

15:54:4311 32,102." That's the Colossus evaluation range?

15:54:4812 A. That is correct, between 26522 and 32102.

15:54:5113 Q. Then it says, "There is a potential for UIM with

15:54:5614 an exposure based upon the evaluation of 2,102, the high

15:54:5715 end of the range."

15:54:5916 A. That is correct. That would be taking into

15:55:0417 account the offset allowed for the underlying settlement

15:55:1018 from USAA of \$30,000, and then ignoring the recovery

15:55:1519 clause under the insurance policy contract for the

15:55:1920 \$4,200-and-change that was paid out under med pay.

15:55:2421 In essence, we would have to waive a recovery of

15:55:3122 that money in order for a settlement to be made of 2102.

15:55:3423 Again, this was all based upon the information available

15:55:3724 at that time, September 28, 2004.

15:55:4025 Q. Did you discuss the Colossus evaluation with

16:02:44 1 see doctors who recommend surgery and a second opinion

16:02:46 2 will be had, and the second-opinion doctor won't

16:02:47 3 recommend the surgery.

16:02:49 4 Q. Did you ever ask for a second opinion with

16:02:52 5 regard to Ms. Dougherty's situation?

16:02:57 6 A. No, I didn't see any reason to put the

16:03:00 7 policyholder through that, such as an independent

16:03:02 8 medical examination, if that's what you mean.

16:03:05 9 Q. Do you do -- do you request medical examinations

16:03:0510 from time to time?

16:03:0711 A. If the case warrants it.

16:03:1012 Q. Do you understand that under the insurance

16:03:1313 policy that Amco or Allied has a right to an

16:03:1314 examination?

16:03:1515 A. Yes, sir, I know that.

16:03:1716 Q. Did you ever give any consideration to having

16:03:1917 Ms. Dougherty examined by a company of -- a doctor of

16:03:2118 the company's choosing?

16:03:2719 A. I opted not to put Mrs. Dougherty through that.

16:03:2820 Q. Why?

16:03:3021 A. Independent medical examinations, or really any

16:03:3522 kind of examination is intrusive, it's time consuming,

16:03:3923 it's stressful. She'd already been through all that.

16:03:4324 She's already has her stress, she's already had her

16:03:4725 inconvenience and so forth. No need to be poked and

16:03:50 1 prodded when all we needed was a simple note from

16:03:54 2 Dr. Sonzilli explaining whether this surgery was a

16:03:55 3 medical necessity.

16:03:57 4 I figured that would be a lot easier than

16:03:59 5 sending her through an independent medical examination,

16:04:11 6 and it was just a note that I was asking for.

16:04:15 7 MR. MURPHY: Let me have marked as next in order

16:04:25 8 an excerpt from Dr. Sonzilli's deposition.

16:04:25 9 (Plaintiff's Exhibit No. 8 was

16:04:2510 marked for identification.)

16:04:2911 THE WITNESS: Mr. Murphy, if it's okay with you

16:04:3212 and Mr. Pardini, can we take a break? I have been

16:04:3313 drinking a lot of water.

16:04:3514 MR. MURPHY: Sure. No need to explain.

16:04:4015 THE VIDEOGRAPHER: This is the video operator.

16:04:4116 The time is 4:04. We are going off the record.

16:15:2017 (Recess taken.)

16:15:2218 THE VIDEOGRAPHER: We are back on the record,

16:15:2519 and it is 4:15.

16:15:3120 MR. MURPHY: Q. I marked as Exhibit 8 excerpts

16:15:3521 from the Sonzilli deposition that were taken from the

16:15:3922 defendant's initial disclosure. So take a look at page

16:15:4723 122 -- excuse me, Bates stamp number 222, which is the

16:15:5124 second page in, and I am going to read to you a question

16:15:5525 and answer and ask you something about it. At the top,

EXHIBIT C
to Declaration of
David M. Porter



Allied
Insurance

a member of Nationwide Insurance

H
Pacific Coast Regional Office
2301 Circadian Way P.O. Box 849
Santa Rosa, California 95402-0849

July 29, 2003

Mr. Stephen M. Murphy, Esq.
44 Montgomery street
Suite 1000
San Francisco, California 94104

Re: Your Client: Christine Dougherty
Our Policyholders: Christine and Malcolm Dougherty
Our Claim Number: 84F99015
Policy Number: PPA-0008899321
Date of Accident: 04/17/2001

Dear Mr. Murphy:

This letter acknowledges the receipt of the documents supporting Mrs. Dougherty's offer of settlement of \$45,000 for her Underinsured Motorist bodily injury claim, arising from the subject accident.

Your settlement packet appears to be complete, and is in review for evaluation. If additional information is required, I will contact you with the specific request or request for that information.

In the meantime, please contact me to discuss this case in further detail.

Respectfully,

Jeffery V. Mangone
Special Claims Representative II
AMCO Insurance Company
(707) 769-1542 Voice
(707) 769-1547 Facsimile

Allied Group, Inc.
AMCO Insurance Company
Allied Property and Casualty Insurance Company
Depositors Insurance Company



EXHIBIT D
to Declaration of
David M. Porter

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)
3 ---oOo---
4
5 CHRISTINE DOUGHERTY,
6 Plaintiff,
7 VS. No. C 07-01140 MHP

8 AMCO INSURANCE COMPANY,
AND DOES ONE THROUGH TWENTY,
9 INCLUSIVE,

10 Defendants.

11 _____/

12 DEPOSITION OF JASON WARTACH

13 March 4, 2008

14

15

16

17

Reported by:
18 ANNETTE M. SNYDER
CSR NO. 1880
19 murphy

20

21

LUSK & SNYDER
22 3715 MONTEREY BOULEVARD
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24

25

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1 Q. Was your authority restricted to whatever
2 value Colossus may have come up with?

3 A. No, I was not.

4 Q. What were you trained was the purpose of any
5 Colossus value?

6 A. The purpose of Colossus was a tool, a jumping
7 off point for myself, as the associate, to give me a
8 general possible range of where that claim might settle.

9 Q. And was -- did Colossus provide a value for
10 general damages?

11 A. Yes.

12 Q. Did it provide a value for -- that included
13 medical expenses?

14 A. The specials, which would include medical
15 expenses, lost wages, things of that nature, there was a
16 place where you could include that in the consultation,
17 if you wish.

18 Q. And in the ultimate number that would be
19 produced by Colossus, was it typically a range of
20 values?

21 A. Yes.

22 Q. And whatever the range was, did you have
23 authority to make a settlement that was above the top
24 end of the Colossus range?

25 A. Yes.

1 A. No.

2 MR. MURPHY: Let me mark this as Exhibit 2,

3 (Whereupon, document entitled "Physical

4 Therapy" was marked Plaintiff's Exhibit 2 for

5 identification.)

6 MR. MURPHY: Q. I took some excerpts from

7 some of the materials that were produced. And, I just

8 want to ask you about some of the entries here.

9 Do you recognize this, this page of a

10 document?

11 A. This is one of the pages in one of our

12 training manuals. I don't know which version this is

13 from, though.

14 Q. If you look at the bottom, it looks like --

15 A. Okay. Version 5. I'm sorry.

16 Q. Your name is there, so I am assuming this was

17 taken from your computer?

18 A. Yes.

19 Q. And it has types of physical therapy,

20 including licensed physical therapist, doctor of

21 osteopathic medicine, chiropractor, massage therapist

22 and acupuncturist. For some of them they say that you

23 enter data into Colossus, but others no. And I want to

24 ask you about the no's.

25 It says performed by an acupuncturist and the

1 answer is "No," for entering into Colossus.

2 Do you know why that is?

3 A. As I understand, acupuncturists are not

4 recognized by the American Medical Association, so that

5 is not entered into the physical therapy section.

6 Q. And it says enter -- medical bills only are

7 entered?

8 A. Correct.

9 Q. Do you have an understanding what effect the

10 entering only the medical bills for acupuncturists would

11 have on the consult number provided by Colossus?

12 A. Are we speaking the general range, or the

13 final range, which includes specialists.

14 Q. Say the general range?

15 A. Yes, I do.

16 Q. What is the effect?

17 A. Without entering additional physical therapy,

18 and only including the medical bills, that would reduce

19 the amount of trauma associated with that consultation.

20 That is how it would view it.

21 Q. And would the result be a lower number for

22 general damages, than if the acupuncturists had been

23 entered into in a way, the same way that the licensed

24 physical therapists and osteopath were entered into this

25 system?

1 A. It could. It would depend on the number of
2 visits.

3 Q. Is there a minimum number of visits to one of
4 these therapists that would result in some increase in
5 the general damage amount?

6 A. I am not aware of the coding that went on
7 behind the scenes by CSC. I do know that one or two
8 entries may or may not result in a change in the general
9 damages. That is what we would see.

10 Q. Did AMCO have a department that was
11 responsible for inputting data into Colossus, separate
12 from the individual adjusters handling claims?

13 A. A department?

14 Q. Yeah. Was there a Colossus Department?

15 A. There was no Colossus Department.

16 (Whereupon, a document entitled Future Surgery
17 was marked Plaintiff's Exhibit 3 for
18 identification.)

19 MR. MURPHY: Q. All right. Let me show you
20 Exhibit 3, which is another excerpt. This is on Future
21 Surgery. You recognize this as the same document as the
22 previous exhibit? I mean from the same document?

23 A. Yes, I do.

24 Q. Okay. And as far as this in regards future
25 surgery and Colossus asks if the surgery would be

1 possible, probable or definite. And then there is

2 definitions for each of these categories.

3 Do you have an understanding as to what effect

4 each of these entries would have on the value for

5 general damages provided by Colossus?

6 A. I do have a general understanding, yes.

7 Q. What is that understanding?

8 A. With these three, possible, probable, and

9 definite, each is going to assign, again, a different

10 severity or add a severity amount to that final range.

11 Each one of them is going to add to it, but each one is

12 going to add a slightly different amount: "Possible"

13 being least amount, "definite" being the greatest

14 amount.

15 Q. And are adjusters trained on how to determine,

16 from the medical records, whether a surgery is possible,

17 probable or definite?

18 A. We provide, as part of our training, a -- we

19 do go through this page and provide a, our understanding

20 of when these would apply.

21 Q. And what do you train in that regard?

22 A. We ask -- we instruct the associate to look

23 for medical documentation from the provider as to

24 whether or not the chance for future surgery would be

25 possible, probable, or definite.

1 Q. Is the medical documentation, that you

2 instruct adjusters to look at, medical records and

3 reports?

4 A. It would include documentation provided by the

5 medical provider, generally about the person who might

6 be referring them for these surgeries.

7 Q. Does Colossus require that any, any entry as

8 to future surgery, whether it be possible, probable, or

9 definite, be backed up by medical record or report?

10 A. We always instruct the associate that they

11 should be looking for objective medical documentation to

12 support their entries. So in this situation, we would

13 want some type of documentation or support from a

14 medical provider, such as an anticipated surgery date,

15 perhaps an estimate of surgical costs, perhaps a

16 treatment plan that would include maybe additional care,

17 and then, if that care was not successful, discussion

18 about a surgical option.

19 In any case, we would instruct the associate

20 to really look for medical documentation to support

21 whatever entry they select here.

22 Q. Is there any provision in Colossus for

23 inputting data from deposition transcripts?

24 A. I don't quite understand.

25 Q. If an adjuster has a deposition transcript

1 over it and point and click, as opposed all key strokes,
2 to typing something in.

3 Q. Instead of typing "spine" you click on the
4 spine?

5 A. You click on the spine. There were be a
6 diagram of the spine, and then you would be able to
7 click on certain vertebra. It had more bells and
8 whistles. It was still essentially the same product,
9 just a little more user friendly from a point-and-click
10 standpoint.

11 Q. Now turn to the "Introduction" on Exhibit 7.

12 It says: Welcome to COLOSSUS, the
13 knowledge-based system for assessing general damages for
14 bodily injury claims.

15 Was it your understanding that Colossus was to
16 assess general damages only, or general damages and
17 economic special damages?

18 A. It would do both.

19 Q. Do you have any understanding on what specific
20 factors Colossus relied on in assessing general damages?

21 A. I don't quite understand the question.

22 Q. Okay. Do you have an understanding of the
23 methodology that Colossus employed in order to take the
24 data that was input, and then come up with a value for
25 general damages?

1 A. I am not a programmer. I don't know the
2 algorithms that were probably used behind the scenes. I
3 understand the process of entering the consultation and
4 some of the similar categories or areas of consultation,
5 but I am not a computer engineer, programmer.

6 Q. Well, for example, do you know if the CSC
7 utilized Average Jury Verdicts on particular types of
8 injuries in order to reach a value of general damages?

9 A. As I understand it, the value that was
10 returned in the consultation, was based on Allied's
11 internal, they call it "tuning," or review of Allied
12 files. The range was not provided by CSC based on
13 anything outside of Allied.

14 Q. So, Allied programs Colossus in some way in
15 order to impact the amount of general damages produced?

16 A. There is a tuning process where we review a
17 number of our files, and then the results of the
18 settlements of those files is what is used to establish
19 that general range that is presented.

20 Q. Were you involved in any of that fine tuning?

21 A. Yes.

22 Q. When was that done?

23 A. That was done every year to 2 years.

24 Q. And so when were you involved?

25 A. During my entire time in the staff area.

1 Q. Okay. Can you be specific in terms of month

2 and year when you were involved in that tuning process?

3 A. Unfortunately, no, I can't.

4 Q. How many times did you do it?

5 A. Each region we would try to get to once every

6 year to 2 years. So with five regions, we are looking

7 at half a dozen times or more.

8 Q. And, could you explain in any, in more detail,

9 what you would do in order to review files, how would

10 you pick the files, how many would you pick, what data

11 would you input into the system, in order to fine tune

12 it for this purpose?

13 A. What would happen is: We had a tech person

14 that would go and just basically pull a random sample,

15 with no focus on any settlement ranges, names, anything

16 of that nature, for a given region. We would like to

17 have anywhere from 250 to 300 files that would be

18 reviewed. Myself and the two nurses would review what

19 was in the file, including both passport and AWD, what

20 was documented. We would look at the consultation, and

21 then we would try to make sure that the entry, or the

22 entries that were in there, were as appropriate as

23 possible.

24 Q. So -- and then what kind of input would you

25 make into the Colossus to fine tune it for purposes of

1 evaluating general damages?

2 A. We would only look at closed files. So these

3 were files where consultation, usage of the consultation

4 was done. And, if we needed to make a change to the

5 consultation for the purpose of tuning, we would do

6 that. And then, there was an application that was

7 provided by CSC that would then take that information

8 and from that, tune the Colossus system specific to

9 Allied.

10 Q. What would you specifically do to tune it?

11 A. I don't quite understand.

12 Q. Would you fill out a form?

13 A. No.

14 Q. Send it to CSC? Would you input it into the

15 website?

16 A. We go right onto the website.

17 Q. What kind of data would you put in the

18 website?

19 A. We would just make sure that the information

20 was correct. So, if the associate didn't put down that

21 the person had a hospital stay when they should have

22 made that selection, we would go in and change that.

23 Q. How would that have an impact on the ultimate

24 number that Colossus would generate for other cases?

25 A. Once we had a sample, 250 to 300 files, it

1 would get through this process. Again, I was not the
2 one who did this. We had a tech person that would do
3 that. They would then go to that particular region and
4 say: We see that we might need to adjust or tune these
5 ranges, and the region would sign off on it. And, then,
6 again, I don't know the behind the scenes how that would
7 all occur. But then future forward any new
8 consultations, once that tuning was complete, would
9 reflect that difference.

10 Q. Was there any variation in the tuning by
11 geographical region?

12 A. Yes.

13 Q. And how was it divided up?

14 A. Each region would have the ability to have a
15 rural versus an urban area that they would select from.

16 So that if you were sitting in California, you
17 would not be presented with a range that somebody,
18 perhaps in Lincoln, was selling a claim for?

19 Q. Lincoln, Nebraska?

20 A. Lincoln, Nebraska. There is probably many
21 Lincolns, but, yes.

22 Q. There are. So would there be one range for
23 all of the State of California?

24 A. There would be at least two.

25 Q. Either a rural or an urban for the State of

1 California?

2 A. Depending on which the associate selected when

3 they began the consultation.

4 Q. Was there any specific range, in terms of

5 tuning for general damages, for Northern California

6 versus Southern California?

7 A. No.

8 Q. Or by county, San Francisco county versus

9 Marin County?

10 A. No.

11 Q. Was there any tuning done for the Colossus

12 range of general damages that took into account not just

13 the Allied claims settlements, but the jury verdicts in

14 a particular region?

15 A. Litigated files were not included in the

16 tuning sample.

17 Q. All right. Well, is it your understanding

18 that Allied used Colossus so that pre-litigation claim

19 settlements would have some consistency?

20 A. I don't know about pre-litigation. I think

21 they were just looking for overall consistency amongst

22 their associates.

23 MR. PARDINI: Would this be a good time to

24 take a short break.

25 THE VIDEOGRAPHER: It is 11:16.

EXHIBIT E
to Declaration of
David M. Porter

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)
3 ---oOo---
4
5 CHRISTINE DOUGHERTY,
6 Plaintiff,
7 VS. No. C 07-01140 MHP
8 AMCO INSURANCE COMPANY,
AND DOES ONE THROUGH TWENTY,
9 INCLUSIVE,
10 Defendants.

12 DEPOSITION OF MICHAEL McKEEVER

13 March 6, 2008

14

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16

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18 ANNETTE

CSR NO. 1880
19 MURPHY

20

21

22

OAKLAND, CALIFORNIA 94619
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24

25

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5 ---oOo---

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9 ---oOo---

10 EXHIBIT 24: EXCERPT FROM PASSPOST FILE ... 25

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13 DEFENDANT'S

14 NONE MARKED

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1 A. Good point. 1998, TIG was sold to Nationwide,

2 so it would be 9 years.

3 Q. So you worked for TIG before --

4 A. Prior to Nationwide.

5 Q. All right.

6 What was your first -- take me through your

7 positions with Nationwide.

8 A. I was a, in -- I was a litigation manager. I

9 moved to Sacramento, was still a litigation manager.

10 Shortly after moving to Sacramento, I became a claims

11 director; and most recently I have become a litigation

12 specialist.

13 Q. What year did you become a litigation

14 specialist?

15 A. This year.

16 Q. So for the period of 2003 through 2006, what

17 was your title?

18 A. Director.

19 Q. Director of claims?

20 A. Field Claims Director is the official title,

21 but, yes, in the Claims Department.

22 Q. What were your job duties as a field director

23 of claims?

24 A. I oversaw a casualty group of four to six

25 claims managers and their teams.

1 Q. And what geographical area did you cover?

2 A. State of California and Nevada.

3 Q. And by "casualty claims," did that include

4 personal injury claims?

5 A. Yes.

6 Q. And uninsured or underinsured-motorist claims?

7 A. Yes.

8 Q. Take a look at Exhibit 1, which is the First

9 Amended Notice of Deposition. And I understand you are

10 being produced as the person most qualified for various

11 categories. Can you identify which categories that is?

12 MR. PARDINI: Mr. McKeever is the being

13 produced as the person most qualified in all categories,

14 with the exception of Category 8.

15 MR. MURPHY: All right. Great. Thank you.

16 Q. Let's look at them in order.

17 Number 1 is AMCO's policies, procedures, and

18 practices regarding training its employees in

19 evaluating, adjusting, and handling uninsured and

20 underinsured motorist claims between 2002 and 2007.

21 What -- first of all, what's the basis for

22 your knowledge about that subject?

23 A. I was employed as a claims director for Allied

24 at the time. I would be familiar with all of those.

25 Q. So were you the primary claims person in

1 California during that period?

2 A. Primary claims person wouldn't be a title.

3 There were several directors that worked in casualty,

4 and I was one of them.

5 Q. How many were there?

6 A. Five directors.

7 Q. And who did you report to, as a field

8 director?

9 A. The state officer, which would be Randy Egers.

10 Q. What is his title?

11 A. State officer.

12 Q. State?

13 A. Officer.

14 Q. That is a new title for me. I haven't heard

15 that.

16 A. It's actually changed in the last couple of

17 weeks, but the last time I reported to him, it was

18 State Officer.

19 Q. Do you know who Randy Egers reported to at

20 that time?

21 A. He would report to the resident vice-president

22 of Pacific Coast regional office. And that changed.

23 Q. And I take it you worked out of the

24 Pacific Coast regional office?

25 A. Yes.

1 Q. What geographical of area is covered by

2 Pacific Coast regional office?

3 A. California and Nevada.

4 Q. What was your job location; where was your
5 office?

6 A. In Sacramento. I started in Camarillo,
7 California, and moved to Sacramento.

8 Q. What year?

9 A. That would be 2000.

10 Q. And so you were one of roughly five claims
11 managers?

12 A. Directors.

13 Q. Directors. And you all supervised claims
14 managers?

15 A. Correct.

16 Q. And were the directors responsible for
17 discrete areas of coverage, or claims, or geographical
18 areas?

19 A. We specialized primary by casualty and
20 litigation.

21 Q. So some were either casualty, and others were
22 litigation?

23 A. One was litigation and several were casualty.

24 Q. And how was it determined which claims
25 managers the various directors would supervise?

1 A. We had relatively entry-level associates, who
2 handled very simple claims reporting to a director. I
3 was in a casualty, inside-casualty environment, so I
4 would have that particular people. We had somebody that
5 was over field associates.

6 In fact, at the time of this claim, I was --
7 handled both inside and field managers.

8 Q. Which claims managers did you handle from 2003

9 to 2006?

10 A. Okay. Kelly Bellinghausen, Jeanne Grubin,
11 Mark Knoll -- drawing a blank. Possibly
12 Sharon Strikwerda. And those are the ones that come to
13 mind. I think I am missing a couple, but they are
14 not -- they weren't involved with this case.

15 Q. Was Jeff Mangone one of the adjusters within
16 your chain of command?

17 A. Jeff Mangone reported to Kelly Bellinghausen
18 and Kelly Bellinghausen reported to me.

19 Q. All right. So, with regard to Category
20 Number 1, what type of training did AMCO provide its
21 employees with regard to adjusting underinsured-motorist
22 claims?

23 A. We like to grow our own, so to speak, so most
24 of the associates who came to Allied began in career
25 school, which was a fairly intensive, 6-to-8 week

1 Eventually we are all merging into the Nationwide group
2 of companies, including AMCO.

3 MR. MURPHY: Q. What years did those things
4 happen?

5 A. I believe '98 TIG was purchased.

6 Q. Right.

7 A. And then 2000, Allied was purchased. And I
8 think I'm -- I think '98 actually Allied was purchased
9 so TIG was purchased prior to that. I am a little off
10 with that date; not a good historian for you on that.

11 Q. Those are public records?

12 A. Yes.

13 Q. Did the company have a practice of obtaining
14 independent medical exams for uninsured or underinsured
15 motorist claims?

16 A. I wouldn't describe it as a "practice." It

17 was --

18 Q. Was that a tool available to the adjusters?

19 A. Sure, yes.

20 Q. Were the adjusters trained on the

21 circumstances which to request such an exam?

22 A. No. There was no formal training on when to
23 acquire an IME. It was simply a tool used to potential
24 further evaluate a claim.

25 Q. Do you have any understanding as to how

1 frequently IME's were used in UM claims?

2 A. We would rarely use them in a casualty

3 environment. Somewhat evasive. And there is a little

4 bit of a handling with kid gloves on an uninsured. We

5 would rather obtain that information through other means

6 and evaluate it. More likely than not, the IME would be

7 done as a part of litigation, on an arbitration issue.

8 Q. So, before arbitration was demanded on a

9 UM claim, is it your understanding that the company

10 never would ask an insured to go through an IME?

11 A. No, I would not say "never." It would be on

12 an infrequent basis.

13 Q. Do you have any understanding of the

14 statistics, what percentage, how many times it happened?

15 A. No.

16 Q. Were adjusters trained to use the IME in

17 UM claims on an infrequent basis?

18 A. Adjusters were aware an IME could be used as a

19 tool to, to evaluate a UIM claim. But beyond that,

20 there was no formal training program.

21 Q. Was there a list of physicians that the

22 company used, from 2002 to 2007, for the purpose of

23 IMEs?

24 A. No, not an exclusive list.

25 Q. Was there a non-exclusive list?

1 A. No.

2 Q. What is your understanding of the purpose of
3 the standard reserve amounts?

4 A. The standard reserve?

5 Q. Yeah.

6 A. Essentially, it's a reserve put on the file,
7 on every file, that balances the books at the end of the
8 year. In other words, gives us an accurate picture of
9 what our exposure was every year. Simply a technique to
10 try to get the reserve right at the end of the year, as
11 opposed to trying each file.

12 Q. And when the reserve-setting system changed to
13 evaluating the exposure, was the purpose of the reserve
14 then to determine what the company might have to pay in
15 the end?

16 A. Well, the reserve is based on information that
17 we know at the time it's set, based -- that gives us our
18 exposure. So, currently that could change. It could
19 change on a daily basis, and occasionally I see files
20 where the reserve changes quite a bit.

21 Q. What is meant by "exposure"?

22 A. The amount that we potential -- not
23 potentially, but that we probably will pay on the case.

24 Q. So, do you train adjusters to pay -- at
25 least -- to offer at least the reserve that was set by

1 looking at exposure?

2 A. No. The reserve and claims evaluations are

3 two distinct issues. Obviously, you should set your

4 reserves based on your evaluation, but it doesn't

5 necessarily mean you pay your reserve.

6 Q. Well, in the underinsured-motorist claims, do

7 you train adjusters to offer the insured the reserve, if

8 it's based on exposure?

9 A. No.

10 Q. Is there any particular training given to

11 adjusters on a negotiating underinsured-motorists claims

12 versus third-party claims?

13 A. No.

14 Q. When an uninsured-motorist claim reaches the

15 litigation stage, are the litigation adjusters trained

16 on negotiating those claims?

17 A. I don't think there is any formal UM versus

18 third-party negotiation training. I would say we give

19 first-party claims the benefit of the doubt; but beyond

20 that, there is no -- not much difference how we are

21 evaluating a third-party or first-party claim.

22 Q. Did the company have a practice, from 2002 to

23 2007, of not settling underinsured-motorist claims when

24 there had been a demand for arbitration?

25 A. No.

1 Q. Have you ever spoken to Linda Howard about
2 this claim?

3 A. No.

4 Q. You have never spoken to Mangone about the
5 claim?

6 A. No.

7 Q. Or Kelly?

8 A. Aside from --

9 Q. The transfer?

10 A. Right.

11 Q. That's it?

12 A. Yes.

13 Q. What did you do in order to testify with
14 regard to Item Number 7, which is the decision-making
15 process utilized by AMCO in evaluating, adjusting, and
16 handling Plaintiff's claim?

17 A. I am completely familiar with the decision
18 processes that AMCO uses.

19 Q. How did -- now it's your understanding that --

20 is it your understanding AMCO denied Ms. Dougherty's
21 underinsured-motorist claim?

22 A. Well, ultimately, AMCO paid Ms. Dougherty's
23 underinsured-motorist claim, so I don't think there was
24 ever a denial as such. There was an arbitration, when
25 two parties disagreed; and there was an award that was

1 paid, but I don't think it was denied.

2 Q. What decision did AMCO make with regard to
3 Ms. Dougherty's claim before the demand for arbitration
4 was made?

5 A. That she had been fairly compensated by
6 underlying coverages.

7 Q. So was the decision then she was not entitled
8 to any underinsured-motorist benefits?

9 A. Again, until we are through the entire
10 process, which includes arbitration, that is our way of,
11 of satisfying our disagreements about value, I would say
12 there were letters by Mr. Mangone that suggested that we
13 owed nothing on the claim. And Jeff always understood
14 that, you know, you could arbitrate it and an arbitrator
15 would make the determination.

16 Q. Is it your understanding that company would
17 satisfy its obligation under the insurance code, to the
18 insured, by arbitrating underinsured-motorist claims?

19 A. I mean it was part of the conditions of the
20 contract that we enter into binding arbitration, so,
21 yes, I think that, that complies with 790.03.

22 Q. So if the company decided to arbitrate all
23 underinsured-motorist claims regardless of the merits of
24 any of them, you think that would comply with the
25 company duty under the insurance code?

1 A. I don't know.

2 Q. Are there statistics or records available that

3 would tell you that?

4 A. I don't think so.

5 Q. Would all decisions to arbitrate a UM claim

6 have to be approved by you, if they were within your

7 area?

8 A. No. Again, the arbitration process itself is

9 a legal process, so it would have been done in the

10 Litigation Department.

11 Q. So --

12 A. I was, again, in charge of casualty division.

13 Q. Okay. For a UM demand for arbitration to get

14 into the litigation section, you would have had to

15 approve that?

16 A. It wasn't an approval process to send it to

17 litigation. It was simply a review of a legal document

18 indicated we needed to refer to litigation. So it's

19 more procedural than anything else.

20 Q. So once it's in litigation, the Litigation

21 Department has the authority to say: We settle this

22 case or we arbitrate it?

23 A. Once it leaves casualty, the Litigation

24 Department conducts an independent evaluation of the

25 claim.

1 didn't want to assert that comparative negligence.

2 Litigation in their independent evaluation apparently

3 asserted that defense.

4 Q. And in that regard, did AMCO put its own

5 interest ahead of the insured?

6 A. No. Again, it's two parties with different

7 opinions over liability or damages. It happens in every

8 claim.

9 Q. So the same decision-making process would

10 apply in any claim, whether it's a liability claim or

11 underinsured-motorist claim?

12 A. Yes. I mean it's a process of evaluating

13 liability, and then evaluating damages. And each claim

14 would be unique on its facts.

15 Q. Does AMCO have any mechanism that it follows

16 to survey files that are uninsured or

17 underinsured-motorist claims, to see if the company

18 complied with its duties under the insurance code?

19 A. Managers audit files. Managers review files.

20 Directors review files. Outside auditors review files.

21 UM is not separated from third party, but it's -- it is

22 among the population of files that would be reviewed.

23 Q. You are not aware of any mechanism to audit

24 UM files specifically to determine whether the company

25 complied with its duties under the insurance code?

1 A. I mean under the insurance code, we have the

2 same duties to third parties as we do the first parties.

3 So we wouldn't differentiate third-party customers. In

4 fact we do call third parties our customers. So the

5 answer is: No, they are not treated differently.

6 Q. So third-party claimants are treated the same

7 as first-party claimants?

8 A. Ideally we like to convert them to customers

9 of Allied. Again, I would tell you that we do give

10 first parties the benefit of the doubt.

11 Q. You do not give third parties the benefit of

12 the doubt?

13 A. Depends on the facts of the case. Each case

14 is a little different.

15 Q. So is there any mechanism in place, or has

16 there been since 2002, where Allied would look at

17 first-party UM claims to see if the company gave those

18 insureds the benefit of the doubt?

19 A. No. That is not a benefit-of-the-doubt

20 survey. It's fair treatment.

21 Q. Well, but is there a survey to see if they

22 were treated fairly?

23 A. No. There is a review whether the file was

24 evaluated appropriately and resolved appropriately. To

25 the extent that enters into the concept of "fair," yes.

1 But it's a relatively normal review of pending files.

2 Q. Can you tell me all of the ways in which AMCO,
3 in it's decision-making process in this case, gave
4 Ms. Dougherty the benefit of the doubt?

5 A. I think Jeff gave her the benefit of the doubt
6 on liability. I think Jeff made reasonable efforts to
7 solicit additional information in which to evaluate the
8 claim further. Those are two examples I think where
9 some benefit of the doubt was given to the insured.

10 Q. Any others you can think of?

11 A. Again, having cursorily reviewed the file, no.

12 Q. Item Number 6 asks for all data relied upon by
13 AMCO in setting reserves for Plaintiff's claim.

14 What have you done to obtain knowledge about
15 that subject?

16 A. We're -- that's the conversation we have had
17 about standard reserves versus current reserves
18 practices. I have seen the note you pointed out on the
19 \$15,000 reserve change. I don't have an explanation
20 why, in my mind, \$15,000 except that could have been a
21 standard reserve back then. So, I think we've kind
22 discussed that issue.

23 Q. So, you -- even though you're appearing here
24 on behalf of AMCO to testify to that issue, you have no
25 knowledge about it?

1 Q. What do you know about that?

2 A. Again, it's something we have talked about.

3 We use Colossus as a tool. We used a central entry unit

4 where associates would give information to a central

5 unit. Central unit would plug information into

6 Colossus. Colossus referral would be sent back to the

7 associate, who then had a tool to help him evaluate, or

8 her, evaluate the case.

9 Q. Do you have understanding as to what data gets

10 input into Colossus?

11 A. Well, the medical data, special damages, the

12 doctor's reports; as much data as we develop gets

13 entered into Colossus.

14 Q. Have you ever input data into Colossus?

15 A. No.

16 Q. Do you have an understanding as to the meaning

17 of whatever amount that Colossus generates for general

18 damages comes from, or the basis for that number?

19 A. No, I don't have that information.

20 Q. For example, are you aware whether that number

21 is generated as a result of some fine-tuning that AMCO

22 might do to the program?

23 A. No, I don't have any understanding of that

24 process.

25 Q. So what is your understanding of the

1 significance of whatever number that Colossus generates

2 for general damages?

3 A. It's a tool to help associates evaluate the

4 claim.

5 Q. Well, is that your understanding that number

6 is based on the probable jury verdict on general

7 damages?

8 A. You know, it's -- when I was trained in

9 Colossus, many years ago, I suspect that was the basis

10 for some of the evaluations that are made on general

11 damages, was jury verdicts for similar injuries.

12 Q. Is it your understanding that that was the

13 basis for the Colossus report generated on

14 Ms. Dougherty's claim?

15 MR. PARDINI: Object; lacks foundation.

16 If you have an understanding, you may respond.

17 THE WITNESS: I never saw the evaluation, so I

18 can't tell you.

19 MR. MURPHY: Q. Well, but in terms of

20 Colossus generally, in 2002, 2003, 2004, is it your

21 understanding that the values generated by Colossus for

22 general damages were based, in any way, on jury

23 verdicts?

24 A. Well, I have an understanding that that is

25 what Colossus used to evaluate their general damage

1 evaluations: Jury verdicts.

2 Q. On what do you base that understanding?

3 A. On training we received in Colossus earlier

4 than, than this, 2000.

5 Q. Were you ever trained that the Colossus value

6 for general damages is based on what amounts AMCO had

7 paid in settlement of other pre-litigation claims?

8 A. No. I don't think Colossus was based on AMCO

9 evaluations. I think it was based on jurisdictional

10 evaluations.

11 Q. "Jurisdictional," meaning jury verdicts?

12 A. Jury verdicts in California, in this instance;

13 in Nevada, if we were talking about Nevada.

14 Q. Would you be surprised to know that Colossus

15 values are based on settlements of pre-litigation claims

16 in the company itself?

17 A. Surprised? No. It's been awhile, so I guess

18 I wouldn't characterize it as "surprise." But I would

19 be -- that would be my understanding; it would not be my

20 understanding.

21 Q. So you understood that whatever value Colossus

22 generated would have some basis in reality, in terms of

23 what the claimant might ultimately recover in front of a

24 jury?

25 A. No. I would not characterize that ultimately